

**UNITED STATES DISTRICT COURT  
DISTRICT OF DELAWARE**

BRIAN JONES,

Plaintiff,

v.

AVANTAX, INC., GEORGANNE  
PROCTOR, MARK ERNST, E. CAROL  
HAYLES, KANAYALAL KOTECHEA, J.  
RICHARD LEAMAN III, TINA PERRY,  
KARTHIK RAO, JANA SCHREUDER, and  
CHRISTOPHER WALTERS,

Defendants.

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**COMPLAINT FOR VIOLATIONS OF  
THE FEDERAL SECURITIES LAWS**

**JURY TRIAL DEMANDED**

Plaintiff Brian Jones (“Plaintiff”), by and through his undersigned counsel, for his complaint against defendants, alleges upon personal knowledge with respect to himself, and upon information and belief based upon, *inter alia*, the investigation of counsel as to all other allegations herein, as follows:

**NATURE AND SUMMARY OF THE ACTION**

1. This is a stockholder action brought by Plaintiff against Avantax, Inc. (“Avantax” or the “Company”) and the members of Avantax’s Board of Directors (the “Board” or the “Individual Defendants”) for their violations of Sections 14(a) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. §§ 78n(a), 78t(a), and U.S. Securities and Exchange Commission (“SEC”) Rule 14a-9, 17 C.F.R. §240.14a-9 (“Rule 14a-9”), in connection with the Board’s attempt to sell Avantax to Aretec Group, Inc., a holding company that does business as Cetera Holdings (“Cetera”) (the “Proposed Transaction”).

2. On September 9, 2023, Avantax entered into an Agreement and Plan of Merger with Cetera and Cetera’s wholly-owned subsidiary C2023 Sub Corp. (“Merger Sub”) (the “Merger

Agreement”). Pursuant to the terms of the Merger Agreement, Cetera will acquire Avantax, with Avantax shareholders receiving \$26.00 in cash for each Avantax common share.

3. On October 16, 2023, the Board authorized the filing of the materially incomplete and misleading Schedule 14A Definitive Proxy Statement (the “Proxy Statement”) with the SEC. Specifically, the Proxy Statement, which recommends that Avantax stockholders vote their shares in favor of the Proposed Transaction, contains materially incomplete and misleading information concerning, among other things: (i) the Company’s financial projections; (ii) the financial analyses that support the fairness opinion provided by the Company’s financial advisor, PJT Partners LP (“PJT Partners”); and (iii) potential conflicts of interest faced by Company insiders.

4. The failure to adequately disclose such material information constitutes a violation of Sections 14(a) and 20(a) of the Exchange Act as Avantax stockholders need such information in order to make a fully informed decision in connection with the Proposed Transaction.

5. The special meeting for Avantax stockholders to vote on the Proposed Transaction is currently scheduled for November 21, 2023. It is imperative that such Exchange Act violations are promptly cured to enable Plaintiff and Avantax’s other shareholders to make an informed decision whether to vote their shares in favor of the Proposed Transaction. Therefore, Plaintiff seeks to enjoin the stockholder vote unless and until such Exchange Act violations are cured.

### **JURISDICTION AND VENUE**

6. This Court has jurisdiction over the claims asserted herein for violations of Sections 14(a) and 20(a) of the Exchange Act and SEC Rule 14a-9 promulgated thereunder pursuant to Section 27 of the Exchange Act, 15 U.S.C. § 78aa, and 28 U.S.C. § 1331 (federal question jurisdiction).

7. This Court has jurisdiction over the defendants because each defendant is either a

corporation that conducts business in and maintains operations within this District, or is an individual with sufficient minimum contacts with this District so as to make the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

8. Venue is proper under 28 U.S.C. § 1391 because defendants are found or are inhabitants or transact business in this District.

### **THE PARTIES**

9. Plaintiff is, and has been at all relevant times, the owner of shares of Avantax common stock.

10. Defendant Avantax is a Delaware corporation, with its principal executive offices located at 3200 Olympus Boulevard, Suite 100, Dallas, Texas 75019. Avantax's shares trade on the Nasdaq Global Select Market under the ticker symbol "AVTA."

11. Defendant Georganne Proctor has been Chair of the Board and a director of the Company at all relevant times.

12. Defendant Mark Ernst has been a director of the Company at all relevant times.

13. Defendant E. Carol Hayles has been a director of the Company at all relevant times.

14. Defendant Kanayalal Kotecha has been a director of the Company at all relevant times.

15. Defendant J. Richard Leaman III has been a director of the Company at all relevant times.

16. Defendant Tina Perry has been a director of the Company at all relevant times.

17. Defendant Karthik Rao has been a director of the Company at all relevant times.

18. Defendant Jana Schreuder has been a director of the Company at all relevant times.

19. Defendant Christopher Walters has been President, Chief Executive Officer, and a

director of the Company at all relevant times.

20. Defendants identified in paragraphs 11-19 are collectively referred to herein as the “Board” or the “Individual Defendants.”

## **SUBSTANTIVE ALLEGATIONS**

### **Background of the Company**

21. Founded in 1983, Avantax provides wealth management solutions to consumers, small business owners, tax professionals, financial professionals, and certified public accounting firms in the United States. Avantax offers an integrated platform of technical, practice, compliance, operations, sales, and product support tools that enable it to offer tax-advantaged planning, investing, and wealth management services. The Company also provides financial planning and advisory services, and retirement plan solutions.

### **The Proposed Transaction**

22. On September 11, 2023, Avantax announced that it had entered into the Proposed Transaction, stating, in relevant part:

DALLAS and LOS ANGELES, Sept. 11, 2023 (GLOBE NEWSWIRE) -- Avantax, Inc. (NASDAQ: AVTA) (the “Company”), a leader in tax-focused financial planning and wealth management, and Cetera Financial Group (“Cetera”), the premier financial advisor Wealth Hub, announced today that Avantax and Cetera Group, Inc. d/b/a Cetera Holdings, the holding company of Cetera, have entered into a definitive agreement whereby Cetera Holdings will acquire all of the issued and outstanding equity of Avantax in an all-cash transaction valuing Avantax at approximately \$1.2 billion, inclusive of Avantax’s net debt.

Following the closing, Avantax will become a standalone business unit within the Cetera family with 3,078 Avantax financial professionals, representing \$83.8 billion in assets under administration and \$42.6 billion in assets under management, as of June 30, 2023. Through the transaction, Cetera will retain Avantax’s legal entities, core technology, product offerings and existing clearing and custody relationships.

Holders of shares of Avantax common stock will receive \$26.00 in cash per share, without interest and subject to required withholding taxes. The purchase price

represents a premium of approximately 30% to the closing price of shares of Avantax common stock on September 8, 2023, the last full trading day prior to announcement of the transaction.

“This transaction, upon closing, will deliver immediate cash value to Avantax stockholders. It is a result of Avantax’s strategic transformation and value creation efforts, which, when combined with the sale of TaxAct in December 2022, has unlocked significant value for our stockholders,” said Chris Walters, Chief Executive Officer of Avantax. “I am extremely grateful to our extraordinary community of financial professionals as well as the entire Avantax team for their unwavering focus and steadfast professionalism throughout our transformation. I am confident that this combination with Cetera is beneficial for Avantax, our financial professionals, employees and stockholders.”

“Over the past several years, Avantax’s Board and senior management team have positioned the Company for long-term, sustainable growth through a simplified strategy, strengthened balance sheet and improved operational performance while exploring strategic opportunities for the future success of the business,” said Georganne Proctor, Avantax’s Chair of the Board. “These efforts and the strength of our platform, people and financial professional community have not gone unnoticed. After carefully evaluating how best to maximize value for our stockholders, the Board unanimously determined that this transaction is in the best interests of Avantax and its stockholders. We also believe that this will position the business, our people, our financial professionals and our affiliates for the future.”

“As we explored expanding Cetera’s capabilities into wealth management and tax expertise as a core component of our growth strategy, it quickly became clear that Avantax was an ideal target and a powerful fit for our business,” said Mike Durbin, CEO of Cetera Holdings. “As we enter Cetera’s next phase of evolution, our five-year growth strategy is off to a terrific start. Avantax will significantly build out Cetera’s capabilities in tax and wealth management. As we have said in the past, disrupting the market with expanding capabilities means more flexibility for advisors, and developing adjacent capabilities and channels expands our addressable market. This acquisition will activate this potential and represents an important milestone in Cetera’s growth trajectory.”

“The addition of Avantax Planning Partners, an award-winning employee-based RIA with over \$7.6 billion in assets under management, will complement and strengthen Cetera’s recently launched, highly successful succession solution offering and will deliver a combined offering that is even more compelling and impactful across all of the advisor communities,” continued Mr. Durbin.

“This acquisition will establish a strategic relationship between Cetera and Fidelity, which will enable Cetera to expand further into a multi-custodial platform, enhancing Cetera’s capabilities to provide tools and functionalities for its affiliated

advisors. We are executing against our multi-custodian aspirations, and capturing new markets and adjacencies,” said Adam Antoniadis, CEO of Cetera Financial Group. “We will take a thoughtful, personalized, and proactive approach with Avantax to ensure Avantax’s valued financial professionals aren’t disrupted in any way. Our tax-centric Cetera Financial Specialist team has already created a formidable presence in our industry, and we are delighted that after the closing of this acquisition, we will be able to offer all of our advisors even greater opportunities to expand into tax and accounting.”

### **Transaction Details**

Avantax’s Board of Directors unanimously approved the transaction, and the transaction is expected to close by the end of 2023, subject to stockholder approval, regulatory approvals, and other customary closing conditions. The transaction is not subject to any financing condition.

Upon completion of the transaction, Avantax will become a privately held company, and its common stock will no longer be traded on Nasdaq.

For further information regarding the terms and conditions contained in the definitive transaction agreement, please see Avantax’s current report on Form 8-K, which will be filed with the U.S. Securities and Exchange Commission in connection with the transaction.

### **Advisors**

PJT Partners is acting as financial advisor to Avantax, and Sidley Austin LLP and Haynes and Boone, LLP are serving as legal counsel to Avantax. Morgan Stanley & Co. is serving as financial advisor to Cetera. UBS Investment Bank and BMO Capital Markets served as co-advisors to Cetera. Willkie Farr & Gallagher LLP is serving as legal counsel to Cetera.

### **The Materially Incomplete and Misleading Proxy Statement**

23. On October 16, 2023, the Board caused to be filed a materially incomplete and misleading Proxy Statement with the SEC. The Proxy Statement, which recommends that Avantax stockholders vote their shares in favor of the Proposed Transaction, fails to disclose material information to Company stockholders, or provides them with materially misleading information, concerning: (i) the Company’s financial projections; (ii) the financial analyses that support the fairness opinion provided by the Company’s financial advisor, PJT Partners; and (iii) potential

conflicts of interest faced by Company insiders.

*Material Misrepresentations and/or Omissions Concerning Avantax's Financial Projections*

24. The Proxy Statement fails to disclose material information concerning the financial projections for the Company.

25. For example, with respect to the Company's "Initial Management Projections," "Bidder Case Projections," and "August Management Projections," the Proxy Statement fails to disclose the line items underlying the calculation of: (i) Adjusted EBITDA (Pre-SBC); (ii) Adjusted EBITDA (Post-SBC); (iii) Unlevered Free Cash Flow; and (iv) Non-GAAP Earnings Per Share, as applicable.

*Material Misrepresentations and/or Omissions Concerning PJT Partners' Financial Analyses*

26. The Proxy Statement fails to disclose material information concerning PJT Partners' financial analyses.

27. With respect to PJT Partners' *Discounted Cash Flow Analysis*, the Proxy Statement fails to disclose a quantification of: (i) stock-based compensation; (ii) the Company's terminal values; (iii) the inputs and assumptions underlying the discount rate range of 11.0% to 13.0%; and (iv) the Company's fully diluted outstanding shares.

28. With respect to PJT Partners' *Selected Comparable Company Analysis*, the Proxy Statement fails to disclose the individual multiples and financial metrics for each of the selected companies analyzed by PJT Partners.

29. With respect to PJT Partners' *Selected Precedent Merger Analysis*, the Proxy Statement fails to disclose the individual multiples and financial metrics for each of the selected transactions analyzed by PJT Partners.

30. With respect to PJT Partners' analysis of Wall Street research analysts' share price

targets for Avantax, the Proxy Statement fails to disclose: (i) the individual price targets observed; and (ii) the sources thereof.

*Material Misrepresentations and/or Omissions Concerning Company Insiders' Potential Conflicts of Interest*

31. The Proxy Statement fails to disclose material information concerning potential conflicts of interest faced by Company insiders.

32. Specifically, the Proxy Statement fails to disclose whether any members of Company management have secured positions with the combined company. The Proxy Statement further fails to disclose whether any of Cetera's proposals or indications of interest mentioned management retention in the combined company following the Proposed Transaction or the purchase of or participation in the equity of the surviving corporation.

33. In sum, the omission of the above-referenced information renders statements in the "Certain Avantax Unaudited Prospective Financial Information," "Opinion of Avantax's Financial Advisor," "Background of the Merger," and "Interests of Directors and Executive Officers in the Merger" sections of the Proxy Statement materially incomplete and misleading in contravention of the Exchange Act. Absent disclosure of the foregoing material information prior to the stockholder vote, Plaintiff and the other stockholders of Avantax will be unable to make a sufficiently informed decision in connection with the Proposed Transaction and are thus threatened with irreparable harm warranting the injunctive relief sought herein.

**CLAIMS FOR RELIEF**

**COUNT I**

**Claims for Violation of Section 14(a) of the Exchange Act and Rule 14a-9 Promulgated Thereunder Against the Individual Defendants and Avantax**

34. Plaintiff repeats and realleges the preceding allegations as if fully set forth herein.

35. The Individual Defendants disseminated the false and misleading Proxy Statement,



which contained statements that, in light of the circumstances under which they were made, omitted to state material facts necessary to make the statements therein not materially misleading, in violation of Section 14(a) of the Exchange Act and Rule 14a-9. Avantax is liable as the issuer of these statements.

36. The Proxy Statement was prepared, reviewed, and/or disseminated by the Individual Defendants. By virtue of their positions within the Company, the Individual Defendants were aware of this information and their duty to disclose this information in the Proxy Statement.

37. The Individual Defendants were at least negligent in filing the Proxy Statement with these materially false and misleading statements.

38. The omissions and false and misleading statements in the Proxy Statement are material in that a reasonable stockholder will consider them important in deciding how to vote on the Proposed Transaction. In addition, a reasonable investor will view a full and accurate disclosure as significantly altering the total mix of information made available in the Proxy Statement and in other information reasonably available to stockholders.

39. The Proxy Statement is an essential link in causing Plaintiff and the Company's stockholders to approve the Proposed Transaction.

40. By reason of the foregoing, defendants violated Section 14(a) of the Exchange Act and Rule 14a-9 promulgated thereunder.

41. Because of the false and misleading statements in the Proxy Statement, Plaintiff is threatened with irreparable harm.

## **COUNT II**

### **Claims for Violation of Section 20(a) of the Exchange Act Against the Individual Defendants**

42. Plaintiff repeats and realleges the preceding allegations as if fully set forth herein.

43. The Individual Defendants acted as controlling persons of Avantax within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their positions as officers and/or directors of Avantax and participation in and/or awareness of the Company's operations and/or intimate knowledge of the false statements contained in the Proxy Statement, they had the power to influence and control and did influence and control, directly or indirectly, the decision making of the Company, including the content and dissemination of the various statements that Plaintiff contends are false and misleading.

44. Each of the Individual Defendants was provided with or had unlimited access to copies of the Proxy Statement alleged by Plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause them to be corrected.

45. In particular, each of the Individual Defendants had direct and supervisory involvement in the day-to-day operations of the Company, and, therefore, is presumed to have had the power to control and influence the particular transactions giving rise to the violations as alleged herein, and exercised the same. The Proxy Statement contains the unanimous recommendation of the Individual Defendants to approve the Proposed Transaction. They were thus directly involved in the making of the Proxy Statement.

46. By virtue of the foregoing, the Individual Defendants violated Section 20(a) of the Exchange Act.

47. As set forth above, the Individual Defendants had the ability to exercise control over and did control a person or persons who have each violated Section 14(a) of the Exchange Act and Rule 14a-9, by their acts and omissions as alleged herein. By virtue of their positions as controlling persons, these defendants are liable pursuant to Section 20(a) of the Exchange Act. As

a direct and proximate result of defendants' conduct, Plaintiff is threatened with irreparable harm.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff demands judgment and preliminary and permanent relief, including injunctive relief, in his favor on behalf of Avantax, and against defendants, as follows:

A. Preliminarily and permanently enjoining defendants and all persons acting in concert with them from proceeding with, consummating, or closing the Proposed Transaction, including the stockholder vote on the Proposed Transaction, unless and until defendants disclose the material information identified above which has been omitted from the Proxy Statement;

B. In the event defendants consummate the Proposed Transaction, rescinding it and setting it aside or awarding rescissory damages to Plaintiff;

C. Directing the Individual Defendants to file a Proxy Statement that does not contain any untrue statements of material fact;

D. Awarding Plaintiff the costs of this action, including reasonable allowance for Plaintiff's attorneys' and experts' fees; and

E. Granting such other and further relief as this Court may deem just and proper.

### **JURY DEMAND**

Plaintiff demands a trial by jury.

Dated: October 26, 2023

By **LONG LAW, LLC**

#### **OF COUNSEL:**

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